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October 27, 1994

Hon. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

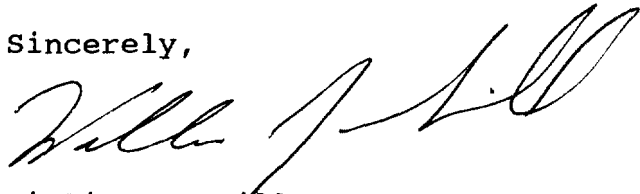
Re: PR Docket No. 94-105; Ex Parte Presentation

Dear Mr. Caton:

Transmitted herewith in accordance with 47 C.F.R. §1.1206(a)(1), on behalf of GTE Service Corporation ("GTE"), are two copies of an ex parte presentation to Regina Harrison.

Should you have any questions in this regard, please do not hesitate to contact the undersigned counsel.

Sincerely,



William J. Sill
Counsel for GTE Service
Corporation

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October 27, 1994

OCT 27 1994

Regina Harrison
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W. Room 5202
Washington, D.C. 20554

Re: PR Docket No. 94-105; Ex Parte Presentation

Dear Ms. Harrison:

GTE Service Corporation ("GTE") has been actively involved in this proceeding as well as various other proceedings initiated by the filing of Petitions to Retain Jurisdiction over Cellular Rates by several States and or Public Utilities Commissions. Only in California has an issue arisen over the necessity to disclose confidential and propriety information to the public.

The Motion of the Cellular Carriers Association of California to Reject Petition or, Alternatively, Reject Redacted Information and the National Cellular Resellers Association's ("NCRA") Request for Access to California Petition for State Regulatory Authority Pursuant to the Terms of A Protective Order have set off a flurry of filings by various commentors, including GTE. Commentors divided into two groups: 1) those opposed to the release of this confidential and proprietary information; and 2) those that support its release. GTE is a member of the first group and has filed several pleadings which establish the proprietary nature of the information and the harm which could accrue from its disclosure.

GTE believes that now that the Reply Comments have been filed, both GTE and the Commission are in a better position to assess the need for disclosure of this sensitive information. The record clearly evidences that the information desired by the NCRA, as well as the Cellular Resellers Association, Inc., Cellular Service, Inc., and ComTech Mobile Telephone Company, is not necessary for a complete and vibrant record. Ten commentors filed Reply Comments, some as lengthy as 108 pages plus appendices. Surely, this is evidence of every commentor's ability to discuss the merits of the issues raised by the California Public Utilities Commission's

Ms. Regina Harrison
October 26, 1994
Page 2

("CPUC") Petition without the need to utilize confidential information. Most tellingly, the CPUC states in its Reply by California to Oppositions to CPUC Petition to Retain Regulatory Authority Over Intrastate Cellular Service Rates that it has met its evidentiary burden. Accepting the CPUC's statement at face value, the CPUC cannot now claim that it has been disadvantaged in any way by the non-disclosure of sensitive information.

In addition, the redacted information is irrelevant to the proceeding. The intent behind the Omnibus Budget Reconciliation Act provision permitting State Petitions was to give each State the opportunity to prove that market conditions within the given State fail to protect consumers from unjust and unreasonable, or unjustly or unreasonably discriminatory, rates. The redacted information, however, is not indicative of the level of competition present in the California cellular market, and does not reflect an improper rate structure.

The redacted information appears to fall into five broad categories: 1) Market Share information; 2) Total Subscriber Units; 3) Financial Data Per Unit; 4) Number of Customers per Rate Plan; and 5) Capacity Utilization. Each type of information, and its irrelevance to the proceeding, will be discussed ad seriatim.

Market Share

- o Estimates of market share are often utilized internally to evaluate the success or failure of a carrier's offerings. Market share is not indicative of the level of competition as explained below.
- o Companies with a large market share exist in fully competitive markets. As the Commission has noted, ". . . a high market share is not incompatible with a high degree of competition." In re Applications of Craig O. McCaw and American Telephone and Telegraph Company, Memorandum Opinion and Order, File No. ENF-93-44, adopted September 19, 1994, released September 19, 1994, at para. 51. Conversely, similar market shares are as indicative of a competitive market as a non-competitive market. Data indicating a decline or increase in market share does not indicate how competitive a market is because a change in market share is as consistent with a competitive market as a market that is non-competitive. Changes in market share may simply be reflective of greater marketing efforts, efficiencies, new technology

Ms. Regina Harrison
October 26, 1994
Page 3

and old fashioned competitive skills.

- o Market share data is also irrelevant because it does not show that carriers with a given share of the market earned that share due to a failure of the competitive market.

Total Subscriber Units:

- o Total subscriber unit data is primarily used internally by a carrier to determine the relative success of a carrier's offerings.
- o Total subscriber unit data and subscriber growth rate data do not contribute to the requisite competition analysis. This data does not reflect whether there is sufficient competition to promote just, reasonable and non-discriminatory rates. Instead, it provides a record of each carrier's growth without reflecting either how the carriers competed for the subscriber or why each subscriber contracted with a particular cellular carrier.

Financial Data Per Unit:

- o Financial data could be used for internal financial evaluation. Such data can be used to determine whether continuing a program would be profitable, but would not reflect how carriers interact in the market or the level of competition.
- o It appears that the CPUC would utilize this financial data to determine the profitability of a system or systems on a per subscriber unit basis in the mistaken belief that such figures were indicative of inter-carrier competition. This data, if accurate, only demonstrates whether a company has properly managed its expenses and revenues so that it is profitable. While this may be illustrative of a carrier's management ability, it does not document either competition or a lack thereof in the cellular industry in California.

Ms. Regina Harrison

October 26, 1994

Page 4

Number of Customers Per Rate Plan:

- o Data such as the number of customers per rate plan is primarily used for internal review of how well a given plan meets the needs of consumers. Data such as this may indicate the desirability of a carrier continuing to offer a particular plan, but does not demonstrate the level of competition.
- o Number of customers per rate plan is not illustrative of the level of competition. Rather, the number of subscribers per plan illustrates how well a plan meets the needs of a particular consumer group. It does not indicate whether the carriers are colluding or working together in an anticompetitive manner. Therefore, it is not relevant to an analysis of the need for continued regulation.

Capacity Utilization:

- o Capacity utilization on a per cell basis provides cellular carriers with an important internal engineering diagnostic tool. By monitoring the utilization of each cell, GTE can make informed decisions on the timing of construction and operation of new cells and or cell modification. Such data, however, is not reflective of inter-carrier competition.
- o Contrary to the CPUC's belief, there is no nexus between inter-carrier competition and capacity utilization of cellular systems. Rather, capacity utilization only demonstrates the amount of cellular traffic that each cell handles. Cellular carriers install cell sites for numerous reasons such as future expected growth, improving technology, or to decrease the burden on overutilized cells. The FCC policy of encouraging the build-out of cell sites also skews the usefulness of capacity utilization data as cells may be placed in operation faster than if the decision to utilize new cells was solely demand driven. This data does not indicate how well the carriers are competing, but may simply reflect a desire to meet consumers' needs.

GTE respectfully submits that the Commission need not reach

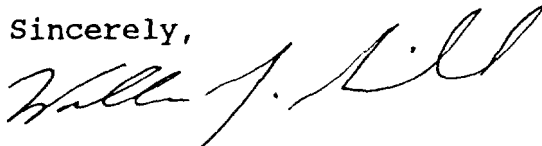
Ms. Regina Harrison
October 26, 1994
Page 5

the question of what type of Confidentiality Agreement is necessary because the information in dispute is irrelevant. While one might otherwise be tempted to err on the side of caution and disclose the information, its highly proprietary and sensitive nature precludes such a result. As has been demonstrated herein, this data is valuable internally to a company, but is not indicative of the level of competition.

Further, the vibrancy of the record should foreclose any concern over the non-utilization of the redacted information. The record, when viewed in totality, clearly demonstrates that California cellular carriers have responded to competition by rapidly constructing their systems and continually increasing the breadth and quality of their service.

In accordance with 47 C.F.R. §1.1206(a)(1), two copies of this letter are being submitted to the Secretary for filing. Please do not hesitate to contact us if you have any further questions or concerns.

Sincerely,



William J. Sill
Counsel for GTE Service Corporation

Carol L. Bjelland
Director Regulatory Matters
GTE Service Corporation

WJS/RMW:jmw